

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**BLUE SPIKE, LLC**

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**v.**

§

**No. 6:12cv499  
(LEAD CASE)**

**TEXAS INSTRUMENTS, INC., ET AL.** §

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**ORDER VACATING CONSOLIDATION**

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On October 9, 2012, the Court consolidated into Lead Case 6:12cv499 approximately 55 “serially” filed *Blue Spike* patent infringement cases. The Consolidation Order provided consolidation was for pretrial issues only, with the individual cases remaining active for trial. The original cause numbers that have not been dismissed by Final Judgment are as follows:

- *Blue Spike, LLC v. Texas Instruments, Inc., et al.*, Cause No. 6:12cv499 (open ONLY as the Lead Case due to the dismissal of all original defendants);
- *Blue Spike, LLC v. WiOffer, LLC*, Cause No. 6:12cv570;<sup>1</sup>
- *Blue Spike, LLC v. Audible Magic Corporation, et al.*, Cause No. 6:12cv576;<sup>2</sup>
- *Blue Spike, LLC v. SMRTV, Inc.*, Cause No. 6:12cv581;

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<sup>1</sup> According to the parties, WiOffer, LLC is a customer of Audible Magic Corporation.

<sup>2</sup> In addition to Audible Magic Corporation, Blue Spike filed Cause No. 6:12cv576 against 24 customers of Audible Magic: (1) Facebook, Inc.; (2) MySpace, LLC; (3) Specific Media, LLC; (4) Photobucket.com, Inc.; (5) Dailymotion, Inc.; (6) Dailymotion S.A.; (7) Soundcloud, Inc.; (8) Soundcloud Ltd.; (9) Myxer, Inc.; (10) Qlipso, Inc.; (11) Qlipso Media Networks Ltd.; (12) Yap.tv, Inc.; (13) GoMiso, Inc.; (14) iMesh, Inc.; (15) Metacafe, Inc.; (16) Boodabee Technologies, Inc.; (17) TuneCore, Inc.; (18) Zedge Holding, Inc.; (19) Harmonix Music Systems, Inc.; (20) Brightcove, Inc.; (21) Coincident.TV, Inc.; (22) Mediafire, LLC; (23) Accedo Broadband AB; and (24) Accedo Broadband N.A., Inc. (collectively “Audible Magic Customers”).

- *Blue Spike, LLC v. The Nielsen Company (US) LLC*, Cause No. 6:12cv587;
- *Blue Spike LLC v. Nitgen & Company Co., Ltd.*, Cause No. 6:13cv56 (Clerk's Entry of Default - June 26, 2013); and
- *Blue Spike LLC v. Sonda Technologies, Ltd.*, Cause No. 6:13cv58 (Clerk's Entry of Default - June 26, 2013).

On March 6, 2014, the Court ordered that this case would proceed in two groups: claims involving **Supplier/Independent Defendants** and claims involving **Customer Defendants**. The Court entered two Scheduling and Discovery Orders (Docket Entry #s 1331 and 1332), one for the Supplier/Independent Defendants with a pretrial conference date of October 5, 2015 and one for the Customer Defendants with a pretrial conference date of September 7, 2016.

The Court also ordered the parties to file a joint notice designating the applicable category for each defendant. Importantly for purposes of this Order Vacating Consolidation is Audible Magic's designation by the parties as being subject to the Supplier/Independent Scheduling and Discovery Order and Audible Magic's Customers' (including WiOffer) designation as being subject to the Customer Scheduling and Discovery Order. The Nielsen Company and SMRTV are also subject to the Customer Scheduling and Discovery Order, but they are not customers of Audible Magic.<sup>3</sup>

As of the date of this Order, Audible Magic is the only remaining Supplier/Independent Defendant subject to the scheduling order with a tentative trial date in October of 2015. In order to promote a more manageable docket going forward, and in the interest of judicial economy, the Court **vacates** the October 9, 2012 Consolidation Order. At this time, the Court will be focusing on getting

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<sup>3</sup> The Nielsen Company and SMRTV both use Gracenote's technology and have filed a motion for summary judgment relating to licenses.

the case involving Blue Spike and Audible Magic ready for trial in the fall. As such, the Court will create two new causes of action: (1) one for Audible Magic as the only remaining Supplier Defendant; and (2) one for Audible Magic's Customers, including WiOffer.

Blue Spike's claims against SMRTV, The Nielson Company, Nitgen and Sonda will be put back into their original cause numbers (6:12cv581, 6:12cv587, 6:13cv56 & 6:13cv58).

Lead Cause No. 6:12cv499, 6:12cv570, and 6:12cv576 will be closed.

Based on the foregoing, it is

**ORDERED** that the October 9, 2012 Consolidation Order is **VACATED**. It is further

**ORDERED** that Blue Spike and Audible Magic's claims are assigned to newly-created Cause No. 6:15cv584. It is further

**ORDERED** that Blue Spike's claims against WiOffer, LLC as well as (1) Facebook, Inc.; (2) MySpace, LLC; (3) Specific Media, LLC; (4) Photobucket.com, Inc.; (5) Dailymotion, Inc.; (6) Dailymotion S.A.; (7) Soundcloud, Inc.; (8) Soundcloud Ltd.; (9) Myxer, Inc.; (10) Qlipso, Inc.; (11) Qlipso Media Networks Ltd.; (12) Yap.tv, Inc.; (13) GoMiso, Inc.; (14) iMesh, Inc.; (15) Metacafe, Inc.; (16) Boodabee Technologies, Inc.; (17) TuneCore, Inc.; (18) Zedge Holding, Inc.; (19) Harmonix Music Systems, Inc.; (20) Brightcove, Inc.; (21) Coincident.TV, Inc.; (22) Mediafire, LLC; (23) Accedo Broadband AB; and (24) Accedo Broadband N.A., Inc. are assigned to newly-created Cause No. 6:15cv585. It is further

**ORDERED** that the filing fee is waived for the newly-created cases. It is further

**ORDERED** that the Clerk of the Court shall add the mediator, technical advisor, and special master to the dockets of both newly-created cases. The Clerk of the Court shall also docket in 6:15cv584 and 6:15cv585 the following:

- this Order Vacating Consolidation;
- the most recent complaint;
- the most recent answer,
- the Court's claim construction orders (Docket Entry #s 1831, 1834, 1893 & 1894);
- all pending motions (Docket Entry # 1678 in 6:15cv585)(Docket Entry #s 1678, 1911, 1957 & 1963 in 6:15cv584); and
- responsive briefing to the pending motions.

The parties may request any additional relevant briefing from 6:12cv499 be docketed in the new cases. It is further

**ORDERED** that the Court will issue a Trial Preparation Order to govern 6:15cv584, including a new pretrial conference date of October 19, 2015 and a jury selection date of November 9, 2015. It is further

**ORDERED** that Audible Magic is **GRANTED** permission to file its *Daubert* motion regarding Blue Spike's damages expert, Rodney Bosco, as requested. The parties shall file the briefing in Cause No. 6:15cv584. Audible Magic's letter briefs requesting permission to file *Daubert* motions regarding Ahmed Tewfik and Dr. Papakonstantinou are **DENIED**. It is further

**ORDERED** that the Clerk of the Court shall docket in Cause Nos. 6:12cv581 and 6:12cv587 the following:

- this Order Vacating Consolidation;
- the most recent complaint;
- the most recent answer,
- the Scheduling and Discovery Order (Customer Defendants) (Docket Entry # 1331);

- the Court's claim construction orders (Docket Entry #s 1831, 1834, 1893 & 1894);
- SMRTV and The Nielson Company's Motion for Summary (Docket Entry # 1687);
- the responsive briefing to the motion for summary judgment.

The parties may request any additional relevant briefing from 6:12cv499 be docketed in 6:12cv581 and 6:12cv587. It is further

**ORDERED** that the Clerk of the Court shall docket in Cause No. 6:13cv56 the Clerk's Entry of Default as to Nitgen & Company Co., Ltd. (Docket Entry #851). It is further

**ORDERED** that the Clerk of the Court shall docket in Cause No. 6:13cv58 the Clerk's Entry of Default as to Sonda Technologies, Ltd. (Docket Entry #852). It is further

**ORDERED** that the Clerk of the Court is directed to **CLOSE** Cause Nos. 6:12cv499, 6:12cv570, and 6:12cv576.

**IT IS SO ORDERED.**

**SIGNED this 24th day of June, 2015.**

  
CAROLINE M. CRAVEN  
UNITED STATES MAGISTRATE JUDGE